

JOHN GILBERT vs. APC NATCHIQ, INC.
CASE NO.: 3:03-CV-00174-RRB

DEPOSITION OF DOUGLAS L. SMITH
JUNE 1, 2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JOHN GILBERT,

Plaintiff,

vs.

APC NATCHIQ, INC.

Defendants.

Case No. 3:03-CV-00174-RRB

DEPOSITION OF DOUGLAS L. SMITH
June 1, 2006

APPEARANCES:

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ALSO PRESENT:

MR. JOHN GILBERT

* * * *

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1 day on, three-day off schedule, and in my absence from
2 the Slope, they were the step-up for the department
3 and fill the roll of HSE manager in my absence.

4 Q Okay. So they were the coordinator of the other
5 specialists. These other specialists generally had --
6 I don't know if duty stations is the right word, but
7 generally had a routine set of work that they were
8 going to do, or expect to do, is that right?

9 A That's correct.

10 Q Okay. So a guy would have wash bay, or light duty
11 shop, or a pad or something to that effect?

12 A That's correct.

13 Q Okay. Would the safety supervisor do safety
14 specialist work routinely?

15 A Not routinely.

16 Q Okay. What safety specialist work would the safety
17 supervisor do?

18 A Probably the same as I would do, and that would be a
19 back-up for the field, if there be excess work,
20 someone off shift, in training, geographically not
21 available, because they're too far out to one site, so
22 we might respond to a scenario on their behalf.

23 Q Okay.

24 A And that would include myself as well.

25 Q Okay. So when a safety supervisor acted as the

1 that's fair to say.

2 Q Okay. And policy and procedures would or ought to be
3 or hopefully were in there?

4 A Not totally encompassing. A lot of our job requires,
5 you know, thought and technical background to derive
6 answers, and not everything is written down for us.

7 Q What does the safety coordinator position of today do
8 differently than the safety specialist position of
9 yesterday?

10 MS. ZOBEL: Safety specialist or.....

11 MR. COVELL: I'm sorry. Thank you. Thank

12 you.

13 Q (By Mr. Covell) Safety supervisor position.

14 A They have more hands-on assignments. They are ask --
15 asked to actually be solely responsible for, for
16 example, all UA collections. We no longer use a third
17 party as we were at the time. They've got a lot more
18 duties that are routine, nonsupervisory, non-directing
19 role.

20 Q What directing actions did the safety supervisor do?

21 A It was within their scope of authority to redirect
22 resources. For example, if we had a job that day that
23 needed extra assistance from one of their specialists,
24 they would have the authority to ask for and redirect
25 people to assist and coordinate when we had the

1 abnormal conditions.

2 Q Okay. But do you know if the safety supervisor ever
3 actually directed somebody to, say, get off that pad
4 and go to this one?

5 A Yes.

6 Q And who, what, when, where, why and how? Can you tell
7 me?

8 A No. I had, of course, my scope of activity and the
9 supervisor had their scope.

10 Q Right.

11 A So the only way for me to quantify how much directing
12 took place was to speak specialists that were employed
13 then, that are still employed now and gauge what their
14 perception was of the supervisor's positions and how
15 much direction they felt they received from that role.

16 Q Uh-huh.

17 A And that's how I derive my opinion that there was
18 quite a bit of directing or coordinating that went on
19 from that position, as I expected it to.

20 Q Okay. Well, let me.....

21 A And in my absence, it was the sole managerial position
22 left on the site.

23 Q Let me sort of work on the coordinating versus
24 directing issue here for a little bit. I mean, -- and
25 I'm asking for examples, I'm not suggesting this

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1 here today, you go here today and you go there today?

2 If you can say.

3 A It was certainly not a democracy. And in my position,
4 I looked to the supervisor to be the second in
5 command, and they had authoritative capability to
6 direct work and -- but in these embedded employees,
7 you need to understand what they're doing that day,
8 what their priorities are before you make a decision
9 who's best available to be redirected. So even though
10 there would be conversation, it was not up for a vote
11 who wanted to go do which activity.

12 Q Okay. Did you ever confer with Mr. Gilbert when you
13 were considering reclassifying the safety supervisor
14 job or eliminating it as the case may be, as to what
15 he did on a day-to-day basis?

16 A I don't think John and I sat down and went through any
17 specific classification question and answer of his
18 position.

19 Q Okay. Giving examples to the extent you possibly can,
20 can you tell me what you understood he did on a day-
21 to-day basis?

22 A Yeah. I think my understanding of his job duties was
23 to be a second tier supervisor in the department, help
24 us, you know, formulate a better department, and
25 provide, you know, direction and oversight and growth

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remediation procedure was necessary?

A Not usually, because we tended to want to have oversight of those kind of exposure levels from this -- from the supervisory positions to ensure we were in compliance.

Q Okay. Did specialists fill the supervisory role when there was no safety supervisor on a hitch?

A If there was an absence from any position, the next most qualified person was stepped up to that role as a fill-in if we had available personnel. But when they went to the new role, they assumed those duties and responsibilities, and it was a temporary step up.

Q Okay. And when that happened, did they get a letter saying you're -- for these two weeks, you're temporarily supervisor or not?

A Email transmission to indicate to the staff who was in what position so they would know whom to call.

Q Okay. Did anything go into their personnel folder in that regard, if you know?

A No.

Q Did they get more money?

A Not if it was temporary assignment.

Q Okay. Okay. As far as -- and this dovetails nicely. As far as your comments regarding Mr. Gilbert filling in -- well, okay. Let's not go there yet. Did Mr.

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1 It's a matter of notification.

2 Q And what kind of issues might you get a phone call
3 about when you were on R and R?

4 A Company policy required notification up the chain of
5 command for a lost time accident.

6 Q Okay.

7 A Significant spills.

8 Q Okay.

9 A That's always in our policy requirements is
10 notification on incidents.

11 Q What kind of decisions might Mr. Gilbert have made as
12 HSE acting manager that he wouldn't have called you
13 about, and he wouldn't have made as safety supervisor?

14 A More -- I think more of it's decisions that might have
15 been discussed or progressed and staff meetings that I
16 would normally been the primary attendee that in my
17 stead Ron or John would have attended. We had a
18 senior staff meeting that they would attend in my
19 absence, and there was always progress on action items
20 that would need to be relayed or discussed, or some
21 degree of decisionmaking took place in my absence that
22 normally I would have been the primary attendee to
23 those meetings and been involved with those decisions.

24 Q Okay. So they'd go to these meetings. They'd
25 disseminate that information, and it's a little

1 unclear about the decisionmaking. Are you saying
2 decision making within this sphere of those meetings,
3 and the issues that are being discussed there, or do
4 you mean independent of that?

5 A The most -- most frequently decisions would have had
6 to have been made to keep things progressed, like at
7 those meetings, and also if other issues came up, I
8 can't think of one specifically, but it could have
9 been an HR-related matter, could have been someone
10 needing additional time off, shift change, problems
11 with someone's performance in the field of a given day
12 that needed to be addressed or other managerial
13 matters that I would have normally maybe been -- been
14 addressing.

15 Q Okay. Well, for instance, I think yesterday we heard
16 about apparently the administrative staff, Kim and
17 somebody else, seemed to be going at it as it were.
18 Is that a situation that you eventually dealt with and
19 got resolved?

20 A Initially it was dealt with by Ron Kirk, which John's
21 alternate.

22 Q Uh-hum.

23 A And the resolution that he came up with wasn't
24 satisfying to the two people that had issues, so we --
25 it eventually made it to me, and we took a different

1 action.

2 Q And was that letting one of them go or.....

3 A Actually, no, we had a discussion of working more
4 collaboratively together and fixing some problems.
5 Eventually there was a reduction in force that
6 eliminated one of those positions, but it was not
7 associated with this performance issue.

8 Q Okay. All right. And so as far as specific examples
9 of what a safety supervisor, or Mr. Gilbert might have
10 done as safety supervisor, outside of what we've
11 already discussed, do you have any other examples you
12 can give me?

13 A If I was on shift, I would normally have been the
14 facilitator on some of the safety meetings. And in my
15 absence, I expected those to continue to be held, and
16 the facilitator role of that fell to the supervisory
17 position.

18 Q Okay. If there was a -- and I don't know if this
19 happened or not, and you can comment in that regard,
20 but if there was a time when you're not there, and
21 there's no safety supervisor there, then would a
22 safety specialist be the facilitator for the meeting?

23 A Only if they're stepped up into that supervisory role.

24 Q Okay. When Mr. Gilbert was a safety specialist, do
25 you know if he ever was stepped up into safety

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1 to be paid for every hour worked without the overtime
2 premium?

3 A More based on my interpretation of the -- kind of the
4 80/20 rule of how much percentage of time that
5 position would routinely perform duties that would
6 fall into a non-exempt category.

7 Q Okay. So the reason why the safety supervisor
8 wouldn't get paid for every hour worked was because in
9 your opinion they weren't spending 20 percent of their
10 time doing non-exempt work?

11 A That's the largest component with the additional
12 component being that I viewed them to be more
13 supervisory in nature because of the department
14 configuration of the organization.

15 Q Okay. I think you've already told us you're not aware
16 of Carr's letter.

17 MR. COVELL: But let's go ahead and get that,
18 Madame Clerk, out of the B exhibits.

19 MS. ZOBEL: I'm going to object to questions
20 in which you're asking him to draw legal conclusions with
21 regard to these payments. I think that's for the court to
22 decide in this case.

23 MR. COVELL: Okay. That's fine. Objection's
24 noted.

25 COURT REPORTER: So the last two look like the

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1 paragraph referencing 8 AAC 15.910(14) seem to set out
2 the supervisory test?

3 A This supervisory test as spelled out here with these
4 embedded employees mainly getting their daily task
5 direction from their, as we called them at the time,
6 clients that they were assigned to. Even though they
7 were internal APC personnel, we've referred to them as
8 our clients from the safety department. Their daily
9 direction was determined a lot by their activities and
10 direction, so our functionality was less daily
11 direction and more administration facilitation,
12 scheduling, the HR functionality, department
13 directions, implementation of policy and procedure.

14 Q Okay. Thank you for that answer. Does this seem to
15 set out what the test for a supervisory employee would
16 be? That is, an exempt supervisory employee?

17 MS. ZOBEL: To the extent you're asking for a
18 legal conclusion, I object.

19 MR. COVELL: Thank you.

20 A So what you're asking me, just for clarification is
21 the first.....

22 MR. COVELL: Let me withdraw the question.

23 Athe first indented paragraph?

24 Q (By Mr. Covell) Is this -- is this the test for a
25 supervisory employee exemption?

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1 A As I know of it, yes.

2 Q Okay. All right. All right. And then did the
3 position of safety supervisor that Mr. Gilbert
4 occupied meet this test for exemption?

5 A so for clarification, you're asking me if that
6 position met the exemption per this test as
7 supervisory?

8 Q Right.

9 A I -- I feel like it does not meet supervisory, that it
10 meets administrative more than supervisory based on
11 the context of this paragraph.

12 Q Okay. And which elements of this paragraph doesn't
13 the safety supervisor position meet?

14 A The being employed solely for the purpose of regularly
15 assigning the activities, directing activities of
16 other employees. So -- and the regularly assigning,
17 that regularly assigning component is more of a
18 functionality that took place at the embedded site.

19 Q Okay. Okay. And then -- let's see. And then would
20 you say the safety supervisor was responsible for
21 results of the work performed of other employees? I
22 guess would you -- okay. Would you say that's so or
23 not, the safety supervisor is responsible for the
24 results of the work performed by other employees?

25 A Not directly. The specialists were more responsible

1 for their performance at their embedded location than
2 transferred to supervisor.

3 Q Okay. So if the specialist was having a product -- or
4 a work product problem, you'd go talk to the
5 specialist and not Mr. Gilbert and say -- is that
6 fair?

7 A No, John or I both may talk to that person. The
8 supervisor or the manager may speak to that person on
9 performance, but as I read -- understand, this is to
10 be more of an accountability perspective, that the
11 supervisor would be accountable for the performance of
12 his employees working under him.

13 Q Okay. And it's -- am I correct in understanding that
14 you never did an analysis of any other positions
15 besides Fort Greeley for APC or otherwise that
16 entailed this -- the issue of whether or not an
17 individual would get paid for, quote, all hours
18 worked, unquote?

19 A That's correct.

20 Q Okay. All right. There are numerous people in the
21 safety specialist and supervisor position, and
22 numerous people have gone through those jobs. Do you
23 think as a whole that they would agree or disagree
24 with the proposition that largely the safety
25 supervisor did the same work as the safety specialist?